

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,

*Plaintiff, Counter-defendant,*

APPLE INC.,

*Defendant, Counterclaimant.*

Case No. 4:20-cv-05640-YGR-TSH

**RESPONSE TO EPIC’S OBJECTIONS  
TO SPECIAL MASTER RULINGS ON  
APPLE INC.’S PRODUCTIONS OF RE-  
REVIEWED PRIVILEGED  
DOCUMENTS**

The Honorable Thomas S. Hixson  
San Francisco Courthouse  
Courtroom E - 15th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”), Apple respectfully submits the following Response to Epic’s Objections to certain of the Special Masters’ rulings on Apple’s productions of re-reviewed and privileged documents, rendered March 17, 2025. We are submitting these documents for *in-camera* review contemporaneously with this filing.

Apple’s responses relate only to documents Apple believes are not already covered by Your Honor’s and Judge Gonzalez Rogers’ existing rulings on Apple’s privilege assertions in this post-judgment discovery. As previously noted, *see* Dkt. 1109, Apple reserves all rights as to documents affected by those rulings, including any post-judgment appellate rights.

**Emails Regarding the Digital Markets Act: Entry Nos. 1531 (PRIV-APL-EG 00162908), 1540 (PRIV-APL-EG 00162954), 1811 (PRIV-APL-EG 00166427)**

PRIV-APL-EG\_00162908 is an email chain initiated by Kyle Andeer (in-house counsel) among other lawyers and senior decision makers regarding an upcoming submission by Apple to the European Commission in connection with regulatory competition changes. In addition to outlining the high-level strategy for the submission, Mr. Andeer explains what issues he intends to raise in future meetings with the European Commission and provides an assessment of the relative strength of those various arguments. The two emails from non-lawyers at the top of the thread are in direct response to and furtherance of Mr. Andeer's legal advice. The email exchange therefore is privileged. *See Labbe v. Dometic Corp.*, 2023 WL 5672950, at \*4 (E.D. Cal. Sept. 1, 2023); *United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065, 1076 (N.D. Cal. 2002).

PRIV-APL-EG\_00166427 is an email chain in which two non-lawyers discuss Apple's plans for responding to various regulatory changes and requirements. The non-lawyers discuss certain variables raised by the legal department that could affect Apple's plans and seek legal advice from Jason Cody (in-house counsel) regarding those variables. Mr. Cody provides a response regarding Apple's likely legal response to potential changes. Because the exchange is primarily in support of a request for legal advice and also reflects information provided by a lawyer, it is privileged. *See In re Meta Healthcare Litig.*, 2024 WL 3381029, at \*2 (N.D. Cal. July 10, 2024); *Labbe*, 2023 WL 5672950, at \*4; *ChevronTexaco*, 241 F. Supp. 2d at 1076.

Apple will produce PRIV-APL-EG\_00162954 without redaction.

**Text Message Chain re Legal Feedback: Entry No. 11516 (PRIV-APL-EG 00265381)**

PRIV-APL-EG\_00265381 is a text message chain regarding potential options for Apple in response to regulatory changes in Europe. In the chain, a non-lawyer asks a question, to which another non-lawyer relays “the feedback we’ve gotten from legal” on that issue. There is further discussion in which the non-lawyer again relays the “current legal view” on the question. The non-lawyer seeks confirmation from Ling Lew (in-house counsel) as to legal’s view, and Ms. Lew confirms the analysis and provides additional color. The text message chain therefore relays legal advice previously received and is therefore privileged, *see Chrimar Sys. Inc. v. Cisco Sys. Inc.*, 2016 WL 1595785, at \*3 (N.D. Cal. Apr. 21, 2016), and also contains an express request for and provision of legal advice, which also is privileged, *see Labbe*, 2023 WL 5672950, at \*4; *ChevronTexaco*, 241 F. Supp. 2d at 1076.

**Email re Agenda: Entry 2133 (PRIV-APL-EG 00170482)**

Apple will produce PRIV-APL-EG\_00170482 without redaction.

DATED: March 25, 2025

WEIL, GOTSHAL & MANGES LLP  
By: /s/ Mark A. Perry  
*Counsel for Defendant Apple Inc.*